

CCASE:
GENERAL COUNSEL V. WHITLEY DEVELOPMENT
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TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
March 23, 1983
OFFICE OF THE GENERAL
COUNSEL
ELIAS MOSES

v.

Docket No. KENT 79-366-D

WHITLEY DEVELOPMENT
CORPORATION

ORDER

On March 7, 1983, the Commission received a motion filed by Whitley Development Corporation seeking the disqualification or removal of the administrative law judge assigned to this matter, and the vacation of all previous orders entered by him. This motion was simultaneously filed with the Commission and the judge. Upon the Commission's receipt of the motion, the record in this matter was forwarded by the judge to the Commission.

Insofar as the operator seeks action by the full Commission on its motion at this time the request is denied. Commission Rule of Procedure 81 governs requests for disqualification and provides:

(b) Request to withdraw. Any party may request a Commissioner, or the judge (at any time following his designation and before the filing of his decision), to withdraw on grounds of personal bias or disqualification, by filing promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) Procedure if Judge does not withdraw. If the judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the Commission stays the hearing or further proceedings by granting a petition for interlocutory review. 29 C.F.R. § 2700.81.

In light of the foregoing, the judge is required to act on the motion and the record is returned to him for further proceedings on the operator's request consistent with the Commission's rules.

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